

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC**

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**Continuation of Certain Air Service  
Under the Coronavirus Response and Relief  
Supplemental Appropriations Act, 2021,  
Public Law 116-260 § 407**

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**COMMENTS OF AIRLINES FOR AMERICA**

Communications with respect to this document should be addressed to:

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April 13, 2021

**Continuation of Certain Air Service  
Under the Coronavirus Response and Relief  
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## COMMENTS OF AIRLINES FOR AMERICA

Airlines for America (“A4A”), on behalf of its Members,<sup>1</sup> submits these comments in response to the Department of Transportation’s (“Department” or “DOT”) Order to Show Cause (“Order”) concerning “Continuation of Certain Air Service”<sup>2</sup> in accordance with Section 407 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (“CRRSA Act” or “Act”)<sup>3</sup> and implementing authority originally granted to the Secretary of Transportation (“Secretary”) by Sections 4005 and 4114(b) of the Coronavirus Aid, Recovery, and Economic Security Act (“CARES Act”).<sup>4</sup>

A4A and our members are grateful for the Administration and the U.S. Congress reaching agreement on bipartisan legislation to assist the U.S. airline industry and once again continuing to make payroll and protect the jobs of hardworking men and women despite devastating impacts to the industry. We greatly appreciate DOT's timely publication of this Order, the opportunity to provide comments, and the flexibility afforded to carriers in the Order.

<sup>1</sup> A4A's members are Alaska Airlines, Inc.; American Airlines Group, Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corp.; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

<sup>2</sup> “Continuation of Certain Air Service,” Department of Transportation Show Cause Order 2021-4-2, Docket No. DOT-OST-2020-0037, (April 6, 2021).

<sup>3</sup> Public Law 116-260, (Dec. 27, 2020).

<sup>4</sup> Public Law 116-136, (Mar 27, 2020).

## INTRODUCTION

The President signed the American Rescue Plan Act of 2021 (ARPA, Pub. L. No. 117-2) into law on March 11, 2021, providing additional payroll assistance to air carriers under Section 7301 of the Act. The Department proposes in this Order to further utilize authority granted to the Secretary under Sections 4005 and 4114(b) of the CARES Act authorizing the Secretary to require, “to the extent reasonable and practicable,” an air carrier receiving financial assistance under the CRRSA Act to maintain scheduled air transportation service as the Secretary deems necessary to ensure services to any point served by that air carrier before March 1, 2020 (Service Obligation). This Order proposes that, pursuant to the CRRSA, air carriers that accept financial assistance under section 7301 of ARPA shall maintain minimum levels of air service on a nationwide basis, with some exceptions, through September 30, 2021.

We very much appreciate the continued flexibility that the Department included in the Order, which includes generally maintaining the Service Obligations from Order 2021-1-5 and including existing exemptions and post-September 30, 2020 service cessations.<sup>5</sup> In addition, we are appreciative that the Order permits carriers that are already scheduled to resume service at covered points later during the effective period of this Order, can resume service at those covered points as scheduled, provided that service is provided to all Service Obligation points before the expiration of this Order.<sup>6</sup> The Order also maintains the flexibility built into prior Orders by permitting mainline carriers to substitute regional

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<sup>5</sup> See Order pages 3-4 “The department will continue to exempt from each Covered Carrier’s Service Obligation those points that had a Departmental exemption in place as of September 30, 2020 under Order 2020-4-2 or as of March 31, 2021 under Order 2021-1-5.3. Further, the Department will exempt from each Covered Carrier’s Service Obligation any points at which a Covered Carrier ceased service between September 30, 2020, and the issuance of Order 2021-1-5, in reliance upon the expiration of the previous Service Obligation, unless the Covered Carrier was the only carrier providing service at the point at the time service was stopped, and there was currently no carrier serving the point.”

<sup>6</sup> See Order page 4.

carrier service to fulfill minimum service level requirements.<sup>7</sup>. We welcome the flexibility that these conditions provide and encourage the Department to finalize them.

Congress rightfully provided the Department with significant discretion to determine conditions of receiving financial assistance that are “reasonable and practicable.” The Department has used that discretion in this Order in ways that will significantly benefit passengers and carriers. In the comments below, we suggest areas where the Department can clarify certain provisions to ensure a smoother implementation, save DOT resources and ultimately provide additional benefits to passengers and carriers.

## **EXEMPTIONS**

The Order carries forward service obligation exemptions from Order 2021-1-5 where a carrier ceased service between September 30, 2020, and the issuance of Order 2021-1-5, in reliance upon the expiration of the previous Service Obligation, unless the Covered Carrier was the only carrier providing service at the point at the time service was stopped, and there was currently no carrier serving the point. We support this process but request that the Department clarify a few points.

While we appreciate the Department carrying forward prior service obligation exemptions we respectfully request that the Department confirm in the forthcoming final order that there is no requirement for a covered carrier to reinstate service to an airport that had, at one point in time, been listed as a service obligation point and since lost service, but did not petition the Department within the prescribed 3-business day timeframe during the previous proceeding (which culminated in Order 2021-1-5) for a carrier to resume service to the airport.

A4A respectfully asks that the Department make explicit in the final order that any such

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<sup>7</sup> See Order page 5, “This proposal would not alter any flexibility that mainline carriers have in their contracts to allocate capacity within their networks.”

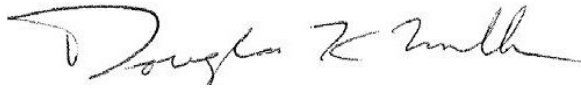
airports that did not petition the Department during the prior proceeding for resumption of service do not qualify as minimum service obligation points for purposes of this proceeding and, therefore, are removed from covered carriers' service obligations.

#### **RE-INITIATING SERVICE**

We greatly appreciate the Department providing a mechanism to account for service that was discontinued during the gap in service obligations between Order 2020-4-2 and Order 2021-1-5. We respectfully request that the Department recognize there is a similar gap between Order 2021-1-5 and Order 2021-4-2 and provide the same mechanism for any carrier service obligation that were discontinued during the gap. We note that service obligations under Order 2021-1-5 expired on March 31, 2020 and Order 2021-4-2 was not distributed until April 6, 2021 and a final order is unlikely to issue before April 14, 2021, given comments are due on Order 2021-4-2 on April 13, 2021. Carriers schedule flights well in advance of a departure date because significant resources must be reserved to ensure a safe and reliable operation. For instance, carriers provide flight and cabin crews the ability to bid on schedules months in advance, carriers must obtain gates, slots, and ground services and equipment, and carriers must determine which aircraft will serve a route, which can also impact several other resources like gates and ground services. Passengers also need time to plan and book tickets in advance of travel. Reinstating service is a process that takes time as the Department recognized by providing a 14-day period for reinstating service in Order 2021-1-5. We respectfully request that the Department recognize the gap between Orders 2021-1-5 and 2021-4-2 and provide the same 14-day period to reinstate service.

We greatly appreciate the Department's efforts to quickly provide information on compliance with ARPA and the CRRSA and look forward to working together to ensure compliance with all carrier requirements under these statutes.

Sincerely,

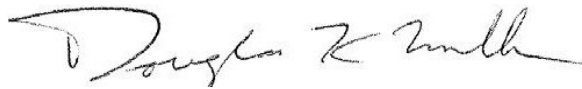
A handwritten signature in black ink, appearing to read "Douglas K. Mullen". The signature is fluid and cursive, with a large initial "D" and a stylized "K".

Douglas K. Mullen  
Vice President & Deputy General Counsel  
AIRLINES FOR AMERICA

## **CERTIFICATE OF SERVICE**

I certify that I have this date caused the foregoing document to be filed in the docket in the above-captioned proceeding and served on all parties served with DOT Order 2021-4-2 via email.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas K. Mullen". The signature is fluid and cursive, with the first name "Douglas" being the most prominent.

Douglas K. Mullen  
Vice President & Deputy General Counsel  
AIRLINES FOR AMERICA

April 13, 2021